

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
of SMUD's Cosumnes Power Plant)	01-AFC-19
Project)	
_____)	

RANCHO SECO CONFERENCE ROOM

14440 TWIN CITIES ROAD

HERALD, CALIFORNIA 95638

FRIDAY, FEBRUARY 21, 2003

5:07 p.m.

Reported by:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Garret Shean, Hearing Officer

E.V. (Al) Garcia, Advisor

STAFF PRESENT

Caryn Holmes, Staff Counsel

Kristy Chew, Project Manager

PUBLIC ADVISER

Grace Bos

APPLICANT

Jane E. Luckhardt, Attorney
Downey, Brand, Seymour & Rohwer

Steven M. Cohn, Assistant General Counsel
Jim Shetler, Assistant General Manager
Colin Taylor, Project Director
Kevin Hudson, Project Manager
Sacramento Municipal Utility District

Bonnie Hays
Bonnie Hays Consulting

INTERVENORS

Kathy Peasha

Mike Roskey

ALSO PRESENT

Brian Krebs, Program Coordinator
Sacramento Municipal Air Quality Management
District

ALSO PRESENT

Bill Meehan
Sacramento Building Trades

Harry Rotz, Business Manager
Plumbers and Pipefitters #447

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P R O C E E D I N G S

5:07 p.m.

PRESIDING MEMBER PERNELL: Good

afternoon. My name is Commissioner Pernell. I'm the Presiding Commissioner on the SMUD Cosumnes project. With me today is my Advisor to my right, who is looking for cookies --

(Laughter.)

PRESIDING MEMBER PERNELL: -- Al Garcia, my Advisor. Our Hearing Officer for this Committee is Mr. Shean. And our Associate Member is Commissioner Rosenfeld, who was unable to be here this afternoon.

The purpose of the prehearing conference is to assess the parties' readiness to go forward with the evidentiary hearings and then provide Committee direction and scheduling for those hearings.

The Committee Members have reserved tentative evidentiary hearing dates. They are March 13th and 14th here in the local area.

Just a little housekeeping. There's a mike at the end of the table. That mike is for our recorder. So if you have a soft voice you're going to need to get closer to the mike. But if

1 you have a deep voice like Mr. Meehan over there
2 in the corner, just stand up and please speak
3 loudly.

4 At this time I'd like the parties,
5 agencies and intervenors to introduce themselves
6 for the record. And we'll start with the
7 applicant. Also introduce your team, please.

8 MR. COHN: Thank you, Commissioner
9 Pernell, Mr. Shean. Steve Cohn appearing on
10 behalf of Sacramento Municipal Utility District.
11 With me at the table here, Jane Luckhardt, our
12 outside counsel from Downey Brand; Colin Taylor,
13 the Project Director; Kevin Hudson, the Project
14 Manager. We have a number of other people I won't
15 introduce, but I do want to point out we also have
16 Jim Shetler, Assistant General Manager, with us
17 this evening. Thank you.

18 PRESIDING MEMBER PERNELL: Thank you,
19 welcome. Staff.

20 MS. HOLMES: Staff is taking a
21 streamlined approach tonight. There's just me,
22 I'm Caryn Holmes, Staff Counsel, and Kristy Chew,
23 the Project Manager.

24 PRESIDING MEMBER PERNELL: Thank you.
25 Are there any other agencies, local, state or

1 county agencies?

2 MR. KREBS: Brian Krebs, Sacramento Air
3 Quality Management District.

4 PRESIDING MEMBER PERNELL: Welcome.
5 Other representatives? What about the
6 intervenors?

7 MS. PEASHA: My name is Kathy Peasha;
8 I'm an intervenor (inaudible).

9 PRESIDING MEMBER PERNELL: Thank you.
10 Welcome. Are there any other representatives that
11 are representing organizations or local community
12 residents?

13 MR. MEEHAN: I'm Bill Meehan; I'm with
14 the Building Trades in Sacramento.

15 PRESIDING MEMBER PERNELL: Welcome.

16 MR. ROTZ: I'm Harry Rotz with the
17 Plumbers and Pipefitters Union.

18 PRESIDING MEMBER PERNELL: Welcome. Is
19 there anyone else representing agencies,
20 intervenors?

21 Our Public Adviser, would you please do
22 a statement and introduce yourself.

23 MS. BOS: My name is Grace Bos,
24 Associate Public Adviser. And we're here to
25 assist the public and if you have any questions I

1 think most of the people I have met and know me,
2 so I won't take up your Friday evening, how's
3 that?

4 PRESIDING MEMBER PERNELL: I appreciate
5 that. All right. At this time I'd like to turn
6 the hearing over to our Hearing Officer, Mr.
7 Shean.

8 HEARING OFFICER SHEAN: Thank you,
9 Commissioner. Attached to the notice of the
10 meeting was this appendix A, which is a list of
11 the topics which potentially are going to be heard
12 at the evidentiary hearings.

13 What I'd like to do is initially have
14 the staff go through and indicate which sections
15 of their staff's final assessment, which I think
16 was filed on February 11th, are sufficiently
17 complete that they're prepared to present them.

18 Then we'll follow the order of the
19 prehearing conference statements which were filed.
20 And there are really only two that indicate a
21 desire to contest an issue based upon the
22 presentation in the staff's final assessment. And
23 that would be SMUD and Ms. Peasha.

24 So, with that we'll go to Ms. Holmes and
25 ask you to identify on that list those topics

1 which, in the mind of the staff, are ready to be
2 presented by the staff.

3 MS. HOLMES: Thank you. As we said in
4 our prehearing conference statement we believe
5 that we're ready to proceed to hearings on all
6 topics with the exception of biology and
7 alternatives.

8 As people are aware, staff has not yet
9 filed the water and soil section of the FSA. We
10 anticipate that that will be filed next Friday,
11 which is sufficiently in advance of the hearings
12 to enable that topic to be held at the hearings
13 that are currently scheduled.

14 HEARING OFFICER SHEAN: All right. With
15 that we will go to SMUD and your prehearing
16 conference statement. I do have a question to see
17 if you're aware of a fact that I'm unaware of. On
18 page 1 in your paragraph entitled, introduction.
19 In that first sentence you discuss the fact
20 there's agreement with the Energy Commission Staff
21 on nearly all the conditions of certification
22 should be included in the Committee's proposed
23 decision approving the CCPAFC.

24 Is that something that in your mind has
25 already happened, or that you hope will happen or

1 why is that appropriate?

2 MR. COHN: Good question. Actually in
3 most cases it's already happened. The only areas
4 that we have any concerns at all that we feel
5 require hearings are in the area of air quality
6 and hazardous materials that we've referenced.

7 The other areas where we attached,
8 you'll notice, to the prehearing conference
9 statement, we did attach some suggested redline
10 changes to the conditions of certification. We
11 would characterize those as just minor wording
12 changes. And staff has scheduled a workshop, I
13 believe on March 4th, and we are very optimistic
14 that those will all be worked out.

15 To the degree there are any wording
16 changes that we cannot work out, we don't feel
17 there's a need for evidentiary hearings. I
18 believe staff will agree that we could handle that
19 through briefing, if necessary.

20 HEARING OFFICER SHEAN: Okay.

21 MS. HOLMES: That's correct.

22 HEARING OFFICER SHEAN: I'm going to
23 just indicate for the public who are here who have
24 read your statement, there is no currently
25 existing Committee proposed decision that approves

1 the AFC.

2 We currently have an open record with an
3 open process. There's not like one sitting on the
4 shelf that says you're approved, and one says
5 you're disapproved. The whole purpose of the
6 proceeding here is to get your input in on the
7 basis of the record, and the independent
8 deliberation by the Committee, and ultimately the
9 Commission will arrive at a decision as to whether
10 it is approved or is not approved. And whether or
11 not the conditions that have been offered by the
12 staff and will be commented on by SMUD or by the
13 intervenors, are appropriate.

14 So, there is no done deal that might be
15 interpreted from that language.

16 So, let's go now to the specifics of
17 what SMUD has asked for with respect to the items
18 you wish to have hearing on.

19 MR. COHN: All right. If you would like
20 to go by topic, starting with air quality, let me
21 turn it over to Jane Luckhardt on the air quality
22 area.

23 MS. LUCKHARDT: Yeah, in air quality we
24 have three areas that we'd like to bring to
25 hearing unless we can work them out with staff

1 before then.

2 One of those involves a condition to
3 require soot filters on construction equipment.
4 Another one involves the additional mitigation
5 that staff has requested; and that's a fireplace
6 retrofit program. And the analysis that backs
7 that up, which deals with PM10 and PM2.5.

8 And also staff has made some changes in
9 its proposed conditions, as well as changes to and
10 modifications of the District's conditions, that
11 being the Sacramento Metropolitan Air Quality
12 Management District, the conditions that they have
13 in the FDOC. Some of them appear in the
14 verification portion of the conditions. But some
15 of those we view as potentially problematic for
16 continued operation. So we'd like to take those
17 to hearing.

18 HEARING OFFICER SHEAN: Okay. And so
19 starting sort of in the order you just gave this,
20 on the soot filters, do you have a witness you're
21 going to propose, or --

22 MS. LUCKHARDT: On all of those areas,
23 basically the area of air quality, we'll be
24 calling Gary Rubenstein. We expect to have an
25 hour approximately of direct; and approximately an

1 hour and a half of cross for staff.

2 MS. PEASHA: Excuse me, Mr. Shean. I
3 thought we were going to do this order of topics,
4 and since I have mitigation on several of the
5 other ones prior to air quality, shall we start
6 with the topic of noise, and work our way down --

7 HEARING OFFICER SHEAN: Well, we have a
8 couple of options here, either to do it that way
9 or to go party-by-party. And SMUD has just a
10 couple of things, this air quality material and
11 hazardous materials management. And once they're
12 through, then we're going to get to you and you
13 could go from either the top of the list or the
14 order in which they were presented in your
15 statement, which started from the top with air
16 quality, too.

17 So, I think we're going to accomplish
18 all of the things we intend to do.

19 MS. PEASHA: Okay.

20 HEARING OFFICER SHEAN: So why don't we
21 just proceed on in that manner.

22 Okay, so we have an hour of direct and
23 you think an hour and a half of cross of staff
24 witnesses. And would that -- haven't identified
25 who that person is. Do you have that in mind?

1 MS. LUCKHARDT: Staff's witness, I
2 believe, is Tuan Ngo, is that correct?

3 MS. HOLMES: That's correct.

4 HEARING OFFICER SHEAN: All right.
5 We'll at least consider your estimate of time in
6 the overall, and attempt to accommodate it. Is
7 that it, then, for air quality?

8 MS. LUCKHARDT: Yes.

9 HEARING OFFICER SHEAN: All right.

10 MR. COHN: And then the other area would
11 be in hazardous materials management. There's
12 actually two conditions that we're contesting.
13 One is Haz-8 on page 4-4.1 of the FSA. The other
14 one is Com-8, which actually appears near the end
15 of the FSA on page 7.1-8.

16 We anticipate calling as a witness in
17 these areas Bob Nelson, our Superintendent of
18 Construction; Jerry Salamy, who is an expert in
19 hazardous materials management from CH2MHILL.

20 And --

21 PRESIDING MEMBER PERNELL: Can you spell
22 his last name, please?

23 MR. COHN: S-a-l-a-m-y. And then Jim
24 Shetler, our Assistant General Manager of Energy
25 Supply.

1 We anticipate for all three of those
2 witnesses it would take only one hour of direct
3 total. And about one hour of cross for Dr. Alvin
4 Greenberg and/or Rick Tyler. Actually, I'm not --
5 both names are listed for that section, so I'm not
6 sure who would be the right person --

7 PRESIDING MEMBER PERNELL: You want both
8 names?

9 MR. COHN: -- for Haz-8. And let me
10 just indicate in that area in particular there is,
11 I would say, at least a 50/50 possibility that
12 after our workshop on March 4th we won't even need
13 to have any hearing time on that. That we would
14 have an agreement on language in those conditions.

15 So our issue only goes to those
16 particular conditions.

17 HEARING OFFICER SHEAN: So do those
18 three witnesses cover both Haz-8 and Com-8?

19 MR. COHN: Correct.

20 HEARING OFFICER SHEAN: All right.
21 Anything further?

22 MR. COHN: And that's it, Your Honor.
23 As I mentioned, the other areas that we gave
24 redline comments, we believe we can work out at
25 the workshop, so we don't anticipate any need for

1 hearing time.

2 HEARING OFFICER SHEAN: All right. Ms.
3 Peasha. You have the floor. Maybe we can take
4 that microphone that is by you.

5 MS. PEASHA: I don't believe I need
6 (inaudible) --

7 HEARING OFFICER SHEAN: Just for the
8 comfort of our court reporter.

9 MS. PEASHA: Certainly. Okay, so if
10 we're starting with air quality, is it Tuan?

11 HEARING OFFICER SHEAN: Tuan Ngo.

12 MS. PEASHA: Tuan Ngo, I would
13 anticipate 30 minutes of cross-examination. Also
14 evidence of documents of digging in the areas of
15 where radioactive material are known to be
16 present. And the effects on the air quality.

17 Also --

18 HEARING OFFICER SHEAN: Those are
19 documents you are going to present?

20 MS. PEASHA: Well, I would like to have
21 testimony of Mr. Ngo, if possible. If he -- I
22 mean that also does fall into the facility design
23 of the engineering of the basins, themselves,
24 depending on who, in fact, is the engineer of the
25 basins that they're designing for the zero liquid

1 discharge.

2 HEARING OFFICER SHEAN: Okay, I'm just
3 trying to make sure that I understand the topic of
4 air quality in the basins and radioactive
5 substances that you say are known to be present.
6 That's all in the same topic in your mind?

7 MS. PEASHA: Well, it's in facility
8 design; it's in air quality; it's in --

9 HEARING OFFICER SHEAN: Perhaps you
10 could just tell me what sort of assertion of claim
11 you're trying to --

12 MS. PEASHA: Well, I'm --

13 HEARING OFFICER SHEAN: -- make with
14 respect to that?

15 MS. PEASHA: Just research I've been
16 doing, depending on what kind of lining and what
17 kind of digging when you have hazard or
18 radioactive material which, of course, with Rancho
19 Seco Park being here there's quite a good chance
20 of that is present. So, --

21 HEARING OFFICER SHEAN: Present in the
22 soil, then?

23 MS. PEASHA: Yes.

24 HEARING OFFICER SHEAN: All right, so is
25 this a matter of excavating the basin, in your

1 mind, has a potential to create an air quality
2 hazard with regard to radioactive substances, --

3 MS. PEASHA: Yes.

4 HEARING OFFICER SHEAN: -- is that
5 right? Okay.

6 MS. HOLMES: Mr. Shean, if I could
7 clarify, the staff witness who evaluated whether
8 or not there was radioactive contamination that
9 could be disturbed as a result of soil
10 disturbance, soil moving activities, is Dr.
11 Greenberg. So he would be the appropriate person
12 to ask any questions on that topic.

13 MS. PEASHA: Okay, then I would propose
14 to cross-examine him, also, on the fact of -- on
15 that matter.

16 HEARING OFFICER SHEAN: Okay, we're just
17 trying to make sure we get the right person here
18 for you.

19 MS. PEASHA: Okay, great, thank you.
20 Also, personal evidence of just from the Bureau of
21 Automotive Repair about the maximal allowable
22 chemicals that are put out by autos, diesels, any
23 kind of equipment that is going to be used,
24 they've lowered the standards, you know, as of
25 November 1st. And potentially I want all diesels

1 and any equipment, all transportation and worker
2 vehicles to meet those requirements that the
3 Bureau of Automotive Repair has now lowered their
4 standards.

5 HEARING OFFICER SHEAN: Okay, let me
6 just make sure I'm getting this right. We're
7 going to have vehicles that are ordinarily going
8 to be used on streets and --

9 MS. PEASHA: That's correct.

10 HEARING OFFICER SHEAN: -- highways,
11 okay. And that will include vehicles used to
12 transport materials for the project, and vehicles
13 used to transport workers to the site.

14 MS. PEASHA: And diesel vehicles for
15 digging and --

16 HEARING OFFICER SHEAN: Okay. I'm just
17 trying to take the ones that are licensed for
18 operation on public roads. And then --

19 MS. PEASHA: Okay.

20 HEARING OFFICER SHEAN: -- a separate
21 category that are not --

22 MS. PEASHA: Okay.

23 HEARING OFFICER SHEAN: -- licensed for
24 operation on public roads, but are construction
25 vehicles or construction equipment, bulldozers, et

1 cetera, heavy equipment and that nature. And so,
2 with respect, now let me just ask you now so we
3 can clarify this, with respect to the street-legal
4 vehicles tat are used for transporting people and
5 materials, what is it that you -- do you want to
6 present something with respect to that? And
7 what's the --

8 MS. PEASHA: Well, for instance, just
9 personally I had to meet the requirements of the
10 CO2 for passing my personal vehicle.

11 HEARING OFFICER SHEAN: Just to
12 relicense it, you mean?

13 MS. PEASHA: Just to relicense it.

14 HEARING OFFICER SHEAN: Okay.

15 MS. PEASHA: It was, you know, 3 parts
16 per million over on the CO2. It' cost me \$1600 to
17 meet those requirements for that. And that was
18 before the date of November 1st, which I called
19 the Bureau of Automotive Repair and they have
20 lowered the maximal allowable standards at that
21 time. I believe that every car that comes in here
22 should also be documented that they do require and
23 they do have their smog certificates. And that --

24 HEARING OFFICER SHEAN: Now, would just
25 the fact that they have a current registration, a

1 little tag on their license, be sufficient for you
2 that --

3 MS. PEASHA: Well, --

4 HEARING OFFICER SHEAN: -- they have at
5 least been smogged at some point? My
6 understanding, that occurs in a two-year cycle for
7 a normal passenger vehicle.

8 MS. PEASHA: That's right, sir, but if
9 you spend more than \$450 at any smog place that's
10 certified then you are -- you know that you no
11 longer have to meet those emission standards.

12 As long as you tried to meet those
13 standards and you did not, after spending that
14 much at a certified emission control licensed --

15 HEARING OFFICER SHEAN: So you want the
16 Commission to attempt to enforce something more
17 stringent than the --

18 MS. PEASHA: No, I just want all the
19 people that do come in here, make sure that they
20 are stringent. And there is an article I just
21 read that as far as diesel recommendations --

22 HEARING OFFICER SHEAN: Can we just stay
23 for a second on this one, because I'm trying to --

24 MS. PEASHA: Sure.

25 HEARING OFFICER SHEAN: -- find out what

1 it is you -- if a vehicle is otherwise found to be
2 noncomplying yet may lawfully be operated on the
3 highway, is what you want this Commission to do,
4 to take that vehicle and require compliance above
5 and beyond whatever the --

6 MS. PEASHA: Not above and beyond --

7 HEARING OFFICER SHEAN: -- they've
8 been --

9 MS. PEASHA: -- just to the
10 ramifications that they --

11 HEARING OFFICER SHEAN: Well, if they've
12 been allowed to operate, as you've described, then
13 I'm trying to understand, do you want us to make
14 it so they can't come here until they meet a
15 higher standard here to do the construction work,
16 until they meet a higher standard --

17 MS. PEASHA: No, I don't.

18 HEARING OFFICER SHEAN: Okay.

19 MS. PEASHA: But I do want, if all
20 personal vehicles to be registered and as of their
21 smog inspection dates, be mandatorily registered
22 with current licenses and --

23 HEARING OFFICER SHEAN: Okay. Now, if
24 you want to you can go to diesel. Do you have
25 diesel highway vehicles?

1 MS. PEASHA: Yeah.

2 HEARING OFFICER SHEAN: An issue with
3 that?

4 MS. PEASHA: Article just recently that
5 I have kept as of record regarding that, they are
6 lowering the standards for that, also. I don't
7 know when that will go into effect, but I would
8 like to be sure that the equipment that's used
9 there is also current.

10 HEARING OFFICER SHEAN: Okay. And then
11 we have the offroad diesel equipment which would
12 include heavy equipment for excavating, et cetera,
13 et cetera.

14 MS. PEASHA: Are there standards that
15 they are required to meet, also?

16 HEARING OFFICER SHEAN: Why don't we let
17 the staff describe the condition that they
18 proposed, because that condition is also one that
19 SMUD has said they object to, and wish to have a
20 hearing on.

21 MS. PEASHA: Okay.

22 HEARING OFFICER SHEAN: And it can be
23 found in their FSA, I'm sure, under the conditions
24 are probably under the AQ-C portion meaning
25 construction. And the --

1 MS. LUCKHARDT: They're AQS-C of the
2 staff conditions.

3 HEARING OFFICER SHEAN: Well, do you
4 want to describe to Ms. Peasha the staff's
5 suggested conditions?

6 MS. HOLMES: Well, there's several
7 conditions -- well, there's several parts of the
8 condition that I think you're referring to, which
9 is AQSC-3. It includes a number of mitigation
10 measures for construction activities in general,
11 including things like tire washing and watering
12 unpaved roads and stuff.

13 But there are two, specifically, I
14 believe -- no, there are more than two, there are
15 a number of them at the end that address the
16 operation of the engines, themselves.

17 For example, if you look at subsection O
18 requires diesel fueled engines to use ultralow
19 sulfur diesel, which contains no more than 15
20 parts per million sulfur. I don't believe that
21 the applicant is contesting that condition.
22 That's an example of a condition that would reduce
23 emissions from diesel construction equipment.

24 HEARING OFFICER SHEAN: And that fuel is
25 generally not required, if I understand correctly,

1 for highway diesel vehicles.

2 MS. HOLMES: Right. Subsection P
3 requires the large diesel engines to meet the 1996
4 ARB or EPA certified standards for offroad
5 equipment.

6 Subsection Q, which I believe is the one
7 that SMUD is concerned about, would require the
8 larger diesel engines to be equipped with
9 catalyzed diesel particulate filters which we
10 commonly refer to as soot filters, unless there's
11 a certification that the use is not practicable
12 for that particular type.

13 And then finally there's a requirement
14 that the engines that are used in the construction
15 of the facility have tags that show that the
16 engines meet the conditions that have been
17 identified.

18 So that's an example of the kinds of
19 conditions that we typically require for
20 construction equipment onsite.

21 HEARING OFFICER SHEAN: Does that make
22 some sense to you now?

23 MS. PEASHA: Um-hum.

24 HEARING OFFICER SHEAN: Okay.

25 MS. PEASHA: Okay, the other thing is --

1 HEARING OFFICER SHEAN: May I ask, do
2 you want something more than what's in there?
3 Than in those four conditions, O, P, Q and R?

4 MS. PEASHA: Well, I can't follow it
5 that quickly, I'm sorry to say, --

6 HEARING OFFICER SHEAN: Okay, that 's
7 all right.

8 MS. PEASHA: -- Mr. Shean, but -- I'm
9 just stating that I have read that there are going
10 to be another standards lowered, and I'm just --
11 is the staff aware of any changes that the state
12 is going to make in the near future on this?

13 MS. HOLMES: I'm not aware of any
14 changes for offroad construction vehicles. But
15 that's certainly a question that our staff is able
16 to answer for you.

17 HEARING OFFICER SHEAN: Okay, why don't
18 we leave this as a matter that, for you, focuses
19 on these four conditions, since SMUD is already
20 focused on condition Q. And I think that will get
21 the hearing process, itself, directed to the
22 matter that I believe is at the core of what you
23 want to present on vehicular air quality.

24 Is that satisfactory to you?

25 MS. PEASHA: Um-hum.

1 HEARING OFFICER SHEAN: Okay.

2 MS. PEASHA: Okay, the other is the wood
3 burning stove that the staff is proposing to have,
4 what, lowered emission, more efficient wood
5 burning stoves?

6 MS. HOLMES: Yes, existing stoves would
7 be replaced with newer, more efficient stoves, and
8 the old stoves destroyed.

9 MS. PEASHA: But there is going to be a
10 limit, and it's going to be a first-come/first-
11 served. What if, in fact, that is a resident's
12 main source of heat, and he's not the first one on
13 the totem pole, you know, as far as meeting that
14 requirement?

15 MS. HOLMES: Well, again, the witness
16 can answer specific questions. Generally
17 speaking, though, the condition was the dollar
18 figure on the number of stoves, and the condition
19 was derived based on estimates of the amount of
20 particulate emissions reductions that would be
21 required to offset the particulate emission
22 reductions that we've identified for the facility.

23 So it's not an intent to provide a
24 general bettering of air quality in the area.
25 It's designed specifically to focus on potential

1 impacts the staff has identified for this
2 facility.

3 Now, if you want to ask questions about
4 how the witness derived those figures, he's
5 certainly available and can provide that
6 information at the hearings.

7 MS. PEASHA: What about testimony from,
8 what about, since we're bringing in natural gas,
9 and those who border along that, what about gas,
10 natural gas for heat, and conventional fireplaces?

11 MS. HOLMES: Again, if you've got
12 questions to ask the witness about why a wood
13 stove rather than gas stoves were selected as the
14 mitigation measure, those are appropriate
15 questions to ask him, and he'll be available to
16 answer those questions at the hearing.

17 MS. PEASHA: Then you're talking, once
18 again, about Mr. Greenberg?

19 MS. HOLMES: No, this would be Mr. Ngo.

20 MS. PEASHA: Mr. Ngo, okay.

21 MS. HOLMES: Dr. Greenberg is the staff
22 witness who evaluated the history of any
23 radiological releases, radioactivity on the site.
24 Everything else with respect to air quality was in
25 the province of Mr. Ngo.

1 MS. PEASHA: What about the fact that
2 natural gas to bordering residences from the
3 gasline that's put in?

4 MS. HOLMES: Again, if you want to ask
5 the staff witness why he selected the particular
6 mitigation measure that's contained in the FSA, I
7 think that's a fair question, and he's available
8 to answer that at the hearings.

9 It's something that could also be
10 discussed at the workshop on the --

11 MS. PEASHA: Okay, is it --

12 MS. HOLMES: -- 4th, potentially.

13 MS. PEASHA: -- feasible to ask a cost
14 analysis regarding that, I mean, at the workshop
15 so that, you know, maybe that would be a better
16 way to go. We're trying to improve the air
17 quality that supposedly is already bad enough.

18 So, --

19 PRESIDING MEMBER PERNELL: A cost
20 analysis on the natural gas pipeline?

21 MS. PEASHA: No. To fork out to
22 residents.

23 HEARING OFFICER SHEAN: Okay, presumably
24 you want to find out why didn't you provide
25 natural gas service to the residents --

1 MS. PEASHA: Certainly.

2 HEARING OFFICER SHEAN: -- as opposed to
3 the fireplaces, right?

4 MS. PEASHA: Right.

5 HEARING OFFICER SHEAN: And why the
6 staff chose that as their condition --

7 MS. PEASHA: Right.

8 HEARING OFFICER SHEAN: -- versus
9 providing new natural gas service to local
10 residents, right?

11 MS. PEASHA: Correct.

12 HEARING OFFICER SHEAN: Okay, and I --

13 MR. COHN: If I may, it may help
14 expedite the hearing, but, you know, SMUD is not a
15 gas utility. We don't - so if the suggestion is
16 why doesn't SMUD provide gas service to residents,
17 we don't provide gas service to anybody, other
18 than our own power plants. So I'm not sure if
19 that's where she was going with it, but we're not
20 a gas utility and we're not seeking to enter that
21 area. I'm sure PG&E will be pleased to know
22 that's not something we're doing right now.

23 HEARING OFFICER SHEAN: Okay, just to
24 satisfy her as to why the choices made by staff
25 were the choices made by staff, we can, with

1 relatively limited scope, have them answer that
2 for you. Okay?

3 MS. PEASHA: Okay. So as far as time
4 reserved for questions to, I suppose I'd need
5 about an hour there.

6 HEARING OFFICER SHEAN: All right, well,
7 we'll bump that up as far as Mr. Ngo is concerned,
8 and provide additional time -- what do you think,
9 for Dr. Greenberg on the radioactivity issue?

10 MS. PEASHA: Yeah.

11 HEARING OFFICER SHEAN: You want, what
12 do you think, a half hour on that?

13 MS. PEASHA: That would be plenty.

14 HEARING OFFICER SHEAN: Okay.

15 MR. COHN: Mr. Shean.

16 HEARING OFFICER SHEAN: Yes.

17 MR. COHN: In this and in any other area
18 we also indicated we'd be willing to have Mr.
19 Taylor and Mr. Hudson available as a panel to ask,
20 you know, to the extent that Ms. Peasha has
21 questions that sort of go across different subject
22 matter lines that might help expedite if she had
23 questions. And we'd be happy to offer them as
24 general witnesses on pretty much any topic.

25 HEARING OFFICER SHEAN: Okay, I assume

1 they're going to be in attendance?

2 MR. COHN: That's correct.

3 MS. PEASHA: Okay, great.

4 HEARING OFFICER SHEAN: All right. Have
5 we taken care of all of your air quality concerns?

6 MS. PEASHA: Yes.

7 HEARING OFFICER SHEAN: Okay.

8 MS. PEASHA: Okay, as far as hazardous
9 material, the document that SMUD provided as of
10 February 19th regards and subjects the compliance
11 project manager to many many many different
12 regulations, and to oversee so much. How does one
13 do that? I mean there are -- he's responsible, or
14 he or she is responsible for every compliance on
15 this. How in the heck can you do that in any --

16 MS. CHEW: I can explain --

17 HEARING OFFICER SHEAN: Okay, first of
18 all it's not their guy, it's the Energy
19 Commission's guy. The compliance project manager,
20 CPM, as shown in the various conditions in the
21 verifications isn't just one person, although one
22 person is designated as the point person.

23 MS. PEASHA: Oh, I was told differently
24 today, that it was one person.

25 HEARING OFFICER SHEAN: Well, there's

1 one person designated as the point person, but
2 it's an office or suboffice within a division at
3 the Energy Commission that has, I guess the best
4 way to say is people who are trained in monitoring
5 the compliance of the construction and operation
6 of these facilities and have done a lot of them.

7 And beneath them, let's say you've got a
8 matter that had to do with air quality and another
9 matter that had to do with structural engineering
10 and another matter that had to do with cultural
11 resources.

12 It's not that they are the ones who have
13 the technical expertise to figure out whether or
14 not the conditions are being complied with
15 exactly. They can start with a general idea if
16 there is a compliance issue, and then hand that
17 off to one of the technical people at the Energy
18 Commission Staff. Essentially the same people who
19 are doing the analysis that appears in the final
20 staff assessment.

21 And say, is there an issue here, is
22 there a problem. Tell me and then I'll get back
23 to, in this case it would be SMUD, but in other
24 cases it's been other developers, and tell them
25 they have to take the following corrective actions

1 or that everything is all right.

2 MS. PEASHA: Okay, well, I would like
3 some time to cross-examine whoever is in charge as
4 the one compliance project manager on how many
5 different staff members they have; what's the
6 criteria for their timely fashion because it seems
7 to me it's a heck of a long time, especially when
8 there might be a crisis going on.

9 And which categories are covered. And
10 who does the compliance project manager answer to.
11 Do they answer to the CPUC and the --

12 HEARING OFFICER SHEAN: No, they would
13 ultimately answer to the five-member California
14 Energy Commission.

15 MS. HOLMES: Mr. Shean, if it would be
16 helpful, perhaps what we could do is have Ms.
17 Scott, who is the guy assigned to compliance --

18 HEARING OFFICER SHEAN: Right.

19 (Laughter.)

20 MS. HOLMES: -- available at the
21 workshop to answer your questions and explain how
22 the compliance process works. You know, it's
23 possible by addressing it at the workshop we could
24 avoid the need for hearing time.

25 Ms. Scott will be available if we need

1 to, at the hearing time, but I suspect that some
2 of the kind of basic information about how
3 compliance works can be addressed at the workshop.

4 MS. PEASHA: When did the workshop
5 notice come out?

6 MS. CHEW: We just published it today.

7 MS. PEASHA: So I'm not aware of that.

8 MS. CHEW: It was sent to the proof of
9 service list today, and sent out to all the other
10 residences today.

11 MS. PEASHA: And the date you have for
12 that?

13 MS. CHEW: Tuesday, March 4th, in the
14 afternoon. The main purpose of the workshop is to
15 go over proposed changes to conditions that SMUD
16 has proposed, which is in the February 19th filing
17 that I see on your lap. And it's to give staff at
18 the Energy Commission an opportunity to talk to
19 SMUD Staff about the proposed changes and see if
20 we can come to an agreement or better
21 understanding of why the proposed changes are
22 being requested.

23 So, that's the primary purpose of the
24 workshop.

25 PRESIDING MEMBER PERNELL: The location?

1 MS. CHEW: The location is at the Energy
2 Commission Offices in Hearing Room A. Notice has
3 also been posted on the web.

4 MS. PEASHA: Okay, that would be helpful
5 to --

6 HEARING OFFICER SHEAN: Since the type
7 of hearing that we expect to hold is essentially
8 where there's a dispute of fact. Somebody says
9 white, the other one says black, and it's up to
10 the Committee and ultimately the Commissioners
11 decide is it black, white or gray.

12 I'm not sure that the issue with respect
13 to compliance is similar to that. So, let's start
14 with making the compliance project manager
15 available to you. And if, s a result of what you
16 learn from her, you still have some comments about
17 the adequacy of the program, we can address that
18 in a nontestifying-under-oath way.

19 MS. PEASHA: Okay, that would be great.

20 HEARING OFFICER SHEAN: So that was your
21 sort of hazmat compliance matter, right? Is there
22 a more separate part of hazardous materials, or do
23 you want to go on to something like -- I'm seeing
24 noise, traffic, water quality, soils and visual
25 plumes.

1 MS. PEASHA: Yeah, I have an addendum to
2 that, too.

3 HEARING OFFICER SHEAN: Okay.

4 MS. PEASHA: So I guess start with
5 number one, noise. Two witnesses, Jim Buntin and
6 Dustin Peasha, regarding the recording of the
7 ambient noise, when they did them. We seem to
8 have a problem with the seasonal tractor work that
9 was done at the same time as that study was put
10 out.

11 Jim Buntin testifies, or write in his
12 report that he saw the tractors but did not hear
13 them. Well, I, on the other hand, and my son,
14 also, you know, --

15 HEARING OFFICER SHEAN: You did?

16 MS. PEASHA: -- black and white, here we
17 go.

18 HEARING OFFICER SHEAN: So, black and
19 white, okay.

20 MS. PEASHA: Yeah. So, 15 minutes
21 there.

22 MS. HOLMES: Excuse me, Mr. Shean. I
23 believe that SMUD actually did the noise
24 monitoring, not Mr. Buntin.

25 MS. PEASHA: CH2MHILL was the one --

1 MR. COHN: Correct, a consultant for
2 SMUD. We probably would want to reserve the right
3 to file testimony, if necessary. I don't know
4 that we will need to, but have someone available
5 if necessary for rebuttal on that.

6 HEARING OFFICER SHEAN: Okay, let me
7 just ask you this. Because one of the things we
8 like to do in terms of holding these hearings is
9 hold them if not only information, we'd go from
10 black and white, but let's say their testimony is
11 white and yours is black, and we end up agreeing
12 with you.

13 What does that change? Does that mean
14 that all of a sudden now that a residence that was
15 determined to be not affected by the noise either
16 of construction or operation now is? As you see
17 it, what's --

18 MS. PEASHA: Well, they will -- they --

19 HEARING OFFICER SHEAN: -- -- what's the
20 effect if your testimony is correct and theirs is
21 wrong?

22 MS. PEASHA: Well, some type of
23 (inaudible) if at all possible, if that's
24 indicative of happening for the plant. The fact
25 of the matter is they said they were going to only

1 go so many decibels over what the ambient noise
2 was out there.

3 And each time they did the testing there
4 was seasonal tractor noise, which you cannot take
5 into consideration.

6 So, what, they move the trailer across
7 the street. They moved him to a doublewide to
8 comply with him. There's got to be some other
9 type of buffering.

10 HEARING OFFICER SHEAN: Okay, so this
11 would be from the measurement taken at your
12 residence is what you're describing, is that
13 right?

14 MS. PEASHA: That's where it was taken.

15 HEARING OFFICER SHEAN: And so do you
16 have in mind -- let's assume again that the
17 Commission and the Committee believe your
18 testimony it's black. And you say, okay, I think
19 therefore I'm being subjected to a more
20 significant impact? Would that be the conclusion
21 you'd like us to draw?

22 MS. PEASHA: Well, they had at once
23 submitted ways to buffer those noises. I don't --

24 HEARING OFFICER SHEAN: Okay, let me
25 just march you through that. So your conclusion

1 would be, therefore, or the conclusion you want us
2 to draw is there is a more significant impact than
3 is shown in the report, and therefore someone
4 should do something to mitigate that at your
5 residence, is that -- would that be where you'd
6 want us to go with this?

7 MS. PEASHA: Certainly. And anyone else
8 who falls into that category between --

9 HEARING OFFICER SHEAN: Okay, because I
10 want to make sure that where we go is that we have
11 a concrete suggestion. So is this like you want
12 trees planted, double-paned windows put in --

13 MS. PEASHA: Right, --

14 HEARING OFFICER SHEAN: -- because
15 that's the sort of typical things that the
16 Commission, through numerous cases, almost dozens
17 of cases, we can tell you that when we begin to
18 encounter this thing, we're looking for remedies
19 that are relatively typical. And that's either
20 sound walls, trees and other things that are --
21 and vegetation that begin to, as you say, buffer
22 the noise. Or you change out the windows that are
23 on the side of the noise source to be double-pane
24 so that there's less noise and it doesn't disturb
25 sleep. Or other things like that. Or wall

1 insulation and things like that.

2 So, do you have in mind, when you
3 testify as to what you consider to be the
4 inadequacies in this noise survey, where you want
5 us to go with that?

6 MS. PEASHA: Yes, I do.

7 HEARING OFFICER SHEAN: Okay, and is it
8 something like I've just described or --

9 MS. PEASHA: Yes, sir.

10 HEARING OFFICER SHEAN: Okay. All
11 right, and you think 15 minutes is going to be
12 sufficient for you to do your --

13 MS. PEASHA: Certainly --

14 HEARING OFFICER SHEAN: -- testimony and
15 cross-examination? Okay.

16 MR. COHN: So, Mr. Shean, we would have
17 available Mark Bastasch, B-a-s-t-a-s-c-h, who's a
18 CH2MHILL noise expert.

19 HEARING OFFICER SHEAN: Okay, one more
20 time.

21 MR. COHN: B-a-s-t-a-s-c-h. He's the
22 one that performed the noise analysis. So we
23 would have him available either for questions or
24 potentially rebuttal.

25 MS. PEASHA: Okay.

1 HEARING OFFICER SHEAN: Okay?

2 MS. PEASHA: Jim Buntin was the one that
3 came out and checked the equipment at that time.
4 So, he actually is --

5 HEARING OFFICER SHEAN: Okay, we've got
6 noise taken care of.

7 MS. PEASHA: Okay. Water quality,
8 soils. Since we're digging basins I have the
9 question, and I would like to know from
10 environmental expert Christine Palisoc, I believe
11 her name is, and she works for the water
12 quality --

13 HEARING OFFICER SHEAN: The Regional
14 Water Quality Control Board?

15 MS. PEASHA: Yeah, California Regional
16 Water. She wrote a report regarding the
17 contamination of soils or water. Nowhere could I
18 find the depth of these basins. If they would
19 interfere with our water tables. If they would
20 interfere with our stormwater in any case. And if
21 the engineers of the basins are going to be
22 suitable for nonleakage of certain pollutants.

23 I tried to contact her, but she's on
24 vacation this week.

25 HEARING OFFICER SHEAN: Okay. And are

1 you talking now about, as far as you know,
2 stormwater retention basins? And these are the
3 ones specifically -- are there ones specifically
4 for this facility that are not also for existing
5 facility, I assume there are.

6 MS. PEASHA: Yes.

7 MR. COHN: Yes, right.

8 HEARING OFFICER SHEAN: And I guess what
9 I'm showing is you have her as a direct witness
10 and then cross for the applicant and the staff, is
11 that right?

12 MS. PEASHA: Right. Also Diane Moore
13 who is a --

14 MS. HOLMES: Can we step back for a
15 second? I'm sorry, what was the -- who was the
16 staff witness and what was the topic on water? I
17 missed that.

18 MS. PEASHA: Christine Palisoc; she's an
19 environmental scientist.

20 MS. HOLMES: She's not a staff witness.
21 We're not planning to call her.

22 HEARING OFFICER SHEAN: No, no, I
23 understand. This is her direct witness.

24 MS. PEASHA: This is my direct witness,
25 yeah. She is --

1 HEARING OFFICER SHEAN: You want a
2 spelling? The spelling is P-a-l-i-s-o-c.

3 MS. PEASHA: That's correct.

4 MS. HOLMES: I'm sorry, Ms. Peasha
5 indicated that she wanted to cross-examine staff,
6 and I hadn't heard an identification of a staff
7 witness or a specific topic in water and soils.

8 HEARING OFFICER SHEAN: Well, let me
9 help her out here.

10 MS. PEASHA: Okay, yeah.

11 HEARING OFFICER SHEAN: What she wants
12 to have is a witness who can testify as to the
13 safety of the stormwater retention basins, and
14 having to do with their depth and leakage
15 potential and ability to affect groundwaters.
16 Does that capture it for you?

17 MS. PEASHA: That's correct.

18 HEARING OFFICER SHEAN: And a similar
19 person from the applicant. And who is Diane
20 Moore?

21 MS. PEASHA: Diane Moore is a biologist
22 and also an ecologist who is an expert in -- and I
23 don't know if we're crossing over bridges here,
24 but the swales and the vernal pools and everything
25 else that are in the area.

1 HEARING OFFICER SHEAN: Okay, now, we
2 may be, because to some degree what you're talking
3 about here also relates back to the -- I mean you
4 have essentially two topics under basins.

5 One is --

6 MS. PEASHA: Well, you know, you
7 bifurcate something like that and that's what
8 happens.

9 HEARING OFFICER SHEAN: That's fine. So
10 one is Dr. Greenberg on the radioactive potential
11 of the excavation. And now the other is the
12 potential for the groundwater contamination and
13 other things like that, right?

14 MS. PEASHA: That's correct.

15 HEARING OFFICER SHEAN: Okay. Now just
16 so I have an idea, your direct of Ms. Palisoc, is
17 it, or --

18 MS. PEASHA: That's what I would say,
19 yeah.

20 HEARING OFFICER SHEAN: Okay, you expect
21 for how long?

22 MS. PEASHA: Let's say 30 minutes.

23 HEARING OFFICER SHEAN: And your cross
24 of the two sides? Apparently going to have people
25 available. Can we make that three quarters of an

1 hour?

2 MS. PEASHA: Sure.

3 HEARING OFFICER SHEAN: Okay.

4 MR. COHN: Did you want us to provide a
5 witness? Was that what I'm hearing --

6 HEARING OFFICER SHEAN: That's what --

7 MR. COHN: -- as available for cross in
8 this area, then? I --

9 HEARING OFFICER SHEAN: Yes, please.

10 MR. COHN: Okay. In that case it would
11 be EJ Koford.

12 HEARING OFFICER SHEAN: What's the
13 spelling of the last name?

14 MR. COHN: K-o-f-o-r-d. EJ are --

15 MS. PEASHA: Isn't --

16 MR. COHN: -- his initials --

17 MS. PEASHA: -- EJ a biologist?

18 MR. COHN: Correct.

19 MS. PEASHA: So are we crossing paths
20 here, too?

21 HEARING OFFICER SHEAN: Say again?

22 MS. PEASHA: Are we crossing,
23 overcrossing here with biologists, since we're
24 holding off on biology?

25 MR. COHN: He has many talents.

1 HEARING OFFICER SHEAN: Yeah, this is
2 going to be an engineering and biology mix.

3 MS. PEASHA: All right, well, then,
4 yeah --

5 MR. COHN: We --

6 MS. HOLMES: Now I'm getting puzzled,
7 I'm becoming puzzled.

8 HEARING OFFICER SHEAN: Um-hum?

9 MS. HOLMES: Are we going to actually be
10 addressing biology?

11 MS. PEASHA: No.

12 MR. COHN: No.

13 MS. HOLMES: Okay, thank you.

14 MR. COHN: No, she just --

15 HEARING OFFICER SHEAN: No, but she has
16 something --

17 MR. COHN: -- she just mentioned that
18 Mr. Koford was a biologist, which is true. But he
19 won't be there to testify about biology.

20 MS. PEASHA: Thank you.

21 MR. HUDSON: EJ is currently developing
22 our stormwater pollution --

23 MS. HOLMES: Thank you.

24 HEARING OFFICER SHEAN: Okay.

25 MS. PEASHA: Okay, so my witness, Diane

1 Moore, who is also a biologist and ecologist, if
2 she has any input on that I can have her as a --

3 HEARING OFFICER SHEAN: Now what's the
4 input you want her -- what do you expect she's
5 going to tell us about these basins? Or water
6 quality, as a general topic?

7 MS. PEASHA: Well, maybe nothing. But
8 if she does have that expertise, just as EJ does,
9 maybe I may need her for some --

10 HEARING OFFICER SHEAN: We're going to
11 confine this to what you've so far told us is
12 pretty much what you want to address, which is the
13 potential for groundwater contamination or other
14 hazards from the --

15 MS. PEASHA: Certainly, and that's what
16 I intend to do. And I would, if she has no input
17 on that, then she won't -- I won't call her for
18 that reason.

19 HEARING OFFICER SHEAN: Well, I'll tell
20 you what we'll do. We'll throw Ms. Moore and your
21 other direct witness together, and you can pick
22 and choose or do them both.

23 MS. PEASHA: Okay.

24 HEARING OFFICER SHEAN: Okay?

25 MS. PEASHA: And I'm hoping we don't

1 spend two days on this, myself, you know, but I
2 just want to cover all paths.

3 HEARING OFFICER SHEAN: Well, then maybe
4 if you are in attendance at the workshop you
5 become satisfied on certain matters and can see a
6 way to saving yourself some time, because we're
7 prepared to hear what you're asking for.

8 MS. PEASHA: Okay. Visual resources.

9 HEARING OFFICER SHEAN: Um-hum.

10 MS. PEASHA: Just from neighbors I have
11 two that would like to put their input on the
12 lighting. In fact, one of the visual resources
13 that I know where it is, they don't throw in the
14 laydown area as being with any lights or -- in
15 fact, it's going to be secured all night long.
16 There's going to be -- is it going to be lit? If
17 there's not a map one or picture one that shows
18 it.

19 HEARING OFFICER SHEAN: Do we know? I
20 mean should we be putting that on the list to
21 discuss?

22 MR. COHN: If she wishes we can --

23 HEARING OFFICER SHEAN: Okay.

24 MR. COHN: -- have, that's one of the
25 issues --

1 HEARING OFFICER SHEAN: All right.

2 MR. COHN: -- that can --

3 HEARING OFFICER SHEAN: General lighting
4 including the laydown lighting.

5 MR. COHN: -- Kevin and --

6 MS. PEASHA: Just once I could -- they
7 are as concerned as I am about if there are more
8 lights, then they are intending to put on just for
9 the site area, itself, as well as the laydown
10 area.

11 HEARING OFFICER SHEAN: Well, we'll
12 include that as a topic so that you're going to
13 presumably tell them you wouldn't like it or you
14 want it limited.

15 MS. PEASHA: Okay, so I'm just saying 15
16 minutes.

17 HEARING OFFICER SHEAN: Do you have
18 those neighbors identified, or do you want to just
19 leave it as --

20 MS. PEASHA: I just want to leave it at
21 that at this time.

22 HEARING OFFICER SHEAN: Okay. And you
23 want to cross some people, cross-examine some
24 folks?

25 MS. PEASHA: Yeah.

1 HEARING OFFICER SHEAN: Do you need all
2 these people that you've listed here?

3 MS. PEASHA: Hopefully I won't need
4 anybody -- get it resolved, but just some of the
5 applicants that would know if there are to be
6 lights out there, that's all I need to know.

7 MR. GARCIA: Mr. Shean.

8 HEARING OFFICER SHEAN: Yes.

9 MR. GARCIA: Let me ask a question here
10 of the applicant. Wouldn't her questions be
11 covered in the facility design section of your
12 application?

13 MR. COHN: Yes.

14 MR. GARCIA: Would it make some sense to
15 provide her with references she can look at that
16 stuff in advance?

17 MR. COHN: Yes, we'd be happy to do
18 that.

19 MS. PEASHA: Why isn't it covered in
20 visual resources if there is lighting there, too,
21 though?

22 HEARING OFFICER SHEAN: Well, ordinarily
23 the staff would have something like that. And
24 would have to deal with -- particularly if it were
25 at some distance from the site, itself.

1 MR. COHN: Mr. Shean, I'm showing page
2 4.2 --

3 MS. PEASHA: Yeah.

4 MR. COHN: -- -44 conditions regarding
5 construction lighting.

6 PRESIDING MEMBER PERNELL: Is that under
7 visual or facility design?

8 MR. COHN: It's under visual --

9 MS. PEASHA: It's under visual.

10 HEARING OFFICER SHEAN: Okay, 4.2-12, is
11 that correct?

12 (Parties speaking simultaneously.)

13 HEARING OFFICER SHEAN: I'm sorry,
14 you're speaking over one another. 4. --

15 MR. COHN: 12-44.

16 MS. LUCKHARDT: That's a condition
17 actually we haven't seen before so we may not be
18 familiar with it. It's Vis-4, construction
19 lighting.

20 HEARING OFFICER SHEAN: Okay, well,
21 that's the typical construction lighting condition
22 as far as I'm familiar with.

23 MR. COHN: And a little bit even beyond
24 the typical, but --

25 HEARING OFFICER SHEAN: Okay. But I

1 guess it doesn't specifically address whether or
2 not the laydown area is to be ordinarily lighted.
3 And that's simply her question. Is there a
4 simple yes or no answer to that, so we can cut to
5 the chase here?

6 MR. COHN: Well, you know, our
7 understanding is this would apply to both. In the
8 laydown area we would also --

9 HEARING OFFICER SHEAN: So for this to
10 apply, --

11 MR. COHN: -- have it minimum --

12 HEARING OFFICER SHEAN: -- then it will
13 be lighted?

14 MR. COHN: Yeah.

15 HEARING OFFICER SHEAN: So the answer is
16 yes, it's going to be lighted? Or at least --

17 MR. COHN: Well, let me qualify that.

18 MS. HOLMES: To the extent that it is
19 going to be lit, the condition would apply to it.

20 MR. COHN: Correct, that's correct.

21 HEARING OFFICER SHEAN: I have a very
22 simple mind here. If you tell me this may apply
23 to the laydown area, that leads me to believe that
24 it's going to be lighted. So, in answer to the
25 very simple question will it be lighted or will it

1 not be lighted, the answer would therefore be?

2 MR. COHN: Well, the answer is as we sit
3 here today we don't know whether we will need to
4 light it or not. If we do need to light it, we
5 will comply with this condition that insures that
6 the lighting is minimized and shielded.

7 HEARING OFFICER SHEAN: Are you going to
8 do construction in shifts other than a daytime
9 shift?

10 MR. COHN: It's not so much that -- it
11 wouldn't be in the middle of the night if that's
12 what you're asking, but during winter hours, for
13 example, early in the morning or late in the
14 afternoon it can be dark.

15 MS. PEASHA: What about security, since
16 you're going to have hazardous materials based on
17 there? You're going to have, I assume, fuel.

18 MR. COHN: Well, we're talking about the
19 construction right now and the laydown area --

20 HEARING OFFICER SHEAN: The hazmat
21 section should contain a whole other section --

22 MS. PEASHA: Well, I'm saying if it's
23 going to have hazardous material on it, is it
24 going to be lit at night? Doesn't that make
25 sense?

1 HEARING OFFICER SHEAN: Why don't you
2 ask Dr. Greenberg, because I think that's in his
3 area, too. My understanding generally would be
4 that any hazardous materials that are there for
5 construction, okay, for construction only, would
6 be secured in an area other than the laydown area.

7 MR. COHN: We --

8 MS. PEASHA: Including refueling for
9 equipment? Refueling tanks.

10 MS. LUCKHARDT: Yes, I think that's
11 shown on --

12 MR. HUDSON: I'm not sure that's been
13 classified --

14 MS. LUCKHARDT: I think that's shown on
15 the current --

16 MS. PEASHA: It certainly is, as far
17 as --

18 MS. LUCKHARDT: -- laydown -- yeah.

19 MS. PEASHA: -- 65 is concerned.

20 MR. COHN: We'd be happy to talk about
21 this at the workshop --

22 MS. PEASHA: Okay, great.

23 MR. COHN: -- to try to --

24 HEARING OFFICER SHEAN: We've got you
25 with time --

1 MR. COHN: -- clarify that.

2 HEARING OFFICER SHEAN: -- for visual,
3 including laydown area lighting.

4 Now, I just want to ask you do you need
5 all four of those staff witnesses that you've
6 requested?

7 MS. PEASHA: No, sir.

8 HEARING OFFICER SHEAN: All right. Do
9 you know whom you need, or can we have staff --

10 MS. PEASHA: I just want one person to
11 answer me if they're going to light it if they're
12 going to -- if that's a hazardous material, it has
13 to be lit according to --

14 HEARING OFFICER SHEAN: Okay, well
15 then --

16 MS. PEASHA: -- regulations.

17 HEARING OFFICER SHEAN: -- perhaps other
18 than the staff, maybe we could direct that to the
19 applicant to provide.

20 MS. PEASHA: That'd be great.

21 HEARING OFFICER SHEAN: So, do you have
22 that person in mind?

23 MR. COHN: Well, I think I indicate that
24 we could have Mr. Taylor and Mr. Hudson available
25 to answer questions on that. We'll also have Bob

1 Nelson available as backup if needed, who will be
2 involved directly with construction.

3 HEARING OFFICER SHEAN: Okay, --

4 MS. PEASHA: Bob Nelson, the --

5 MR. COHN: The one sitting in the --

6 MS. PEASHA: Construction --

7 MR. COHN: Superintendent.

8 MS. PEASHA: -- Superintendent.

9 MR. COHN: Correct.

10 MS. PEASHA: Okay.

11 MS. HOLMES: Could I interject just a
12 simple question at this point. Does that mean
13 that we don't need to have staff witnesses on this
14 topic?

15 HEARING OFFICER SHEAN: That's what I
16 was going to suggest to our witness here. Do
17 you -- if that --

18 MS. PEASHA: No, I don't think so.

19 HEARING OFFICER SHEAN: No, you don't
20 think you need them? You're going to get the
21 horse's mouth on this issue.

22 MS. PEASHA: Well, I'm hoping it doesn't
23 exist, to tell you the truth, as far as that
24 laydown area. But --

25 HEARING OFFICER SHEAN: Okay.

1 MS. PEASHA: -- if it does, it's
2 required. And it is objectively, you know,
3 visual, then, yeah, I would need a staff person.

4 HEARING OFFICER SHEAN: All right.
5 Okay, let's please not get to the 13th and 14th
6 and somebody says, I don't know. Okay, that's not
7 helpful.

8 MS. PEASHA: That's right.

9 HEARING OFFICER SHEAN: All right. Now,
10 your visual, does this also include plumes? Did
11 you want that addressed?

12 MS. PEASHA: Yes, I do.

13 HEARING OFFICER SHEAN: Okay. And
14 what's the nature of the -- is that going to be
15 direct with people saying they don't like them, or
16 do you want cross with --

17 MS. PEASHA: Well, I'd like to know why
18 there are more than one visual report done
19 regarding the significance, the non significance
20 of the plumes and the towers, themselves. They
21 wrote two different reports, two different. And
22 to me, visual resources is one thing, what you see
23 out there. And so the witnesses that I'd like to
24 call are, let's see here -- I guess Dale Edwards,
25 William Walters, Lisa (inaudible) and Michael

1 Clayton.

2 MS. HOLMES: If I could, the middle two
3 witnesses, I believe, were -- their involvement
4 was limited to modeling the plumes, themselves,
5 the technical analysis that was done to describe
6 how big or how often the plumes would be.

7 The more general types of questions that
8 you have addressed so far could be directed to Mr.
9 Clayton and Mr. Edwards.

10 If you're not interested in the modeling
11 analysis then we don't need the middle two
12 witnesses.

13 MS. PEASHA: Okay.

14 HEARING OFFICER SHEAN: Okay?

15 MS. LUCKHARDT: So does that mean you're
16 bringing Dale and Michael Clayton?

17 MS. HOLMES: Yes, it does.

18 HEARING OFFICER SHEAN: Haven't we
19 exhausted your list yet? I think we --

20 MS. PEASHA: No, there's still --

21 HEARING OFFICER SHEAN: No?

22 MS. PEASHA: Okay, traffic and
23 transportation.

24 HEARING OFFICER SHEAN: Oh, I beg your
25 pardon, yes. I do see that now.

1 MS. PEASHA: Actually I would like to
2 call some of the neighbors who believe that
3 there's no reason for Clay East Road to be used as
4 for personnel once this building is in operation.
5 You know, it just opens up safety mitigation which
6 is why we moved traffic around the corner to begin
7 with.

8 We're talking another half a mile for
9 these people to go around and it would also check
10 to be sure that we are getting operation people in
11 there, and also the delivery people that are
12 expected to be there with deliveries.

13 HEARING OFFICER SHEAN: Okay, do you
14 want to cross these two staff people? Is that --

15 MS. PEASHA: Um-hum.

16 HEARING OFFICER SHEAN: All right.

17 MS. HOLMES: Is she looking for a staff
18 witness or for a SMUD witness?

19 MS. PEASHA: Well, let's see, who's --

20 HEARING OFFICER SHEAN: Or do you want
21 to have your own people, a couple of neighbors?

22 MS. HOLMES: SMUD made the proposal to
23 use the road. That's a SMUD proposal. And then
24 staff analyzed what the impacts are of that
25 proposal. And it's not clear to me whether she's

1 concerned about the decision, itself, or whether
2 she's concerned --

3 MS. PEASHA: I'm concerned about --

4 MS. HOLMES: -- about the analysis of
5 the --

6 MS. PEASHA: -- the decision, itself,
7 that it has to be used at all.

8 MR. COHN: Then we'll make available Mr.
9 Hudson and Mr. Taylor on that topic.

10 MS. PEASHA: Thank you.

11 MR. TAYLOR: We offered a road to bypass
12 the Clay East Road for the construction phase.

13 HEARING OFFICER SHEAN: Okay, I think
14 her, if I have written my notes down accurately,
15 this has to do with operation phase.

16 MR. TAYLOR: Exactly.

17 HEARING OFFICER SHEAN: Okay.

18 MS. PEASHA: Operation and deliver.

19 HEARING OFFICER SHEAN: Yes, people and
20 deliveries.

21 MS. PEASHA: Um-hum.

22 MR. TAYLOR: All right.

23 HEARING OFFICER SHEAN: Okay. About 45
24 minutes for that entire topic?

25 MS. PEASHA: I give it only 25.

1 HEARING OFFICER SHEAN: Oh, all right.

2 Sold.

3 MS. HOLMES: Does that mean that we
4 don't need the staff witnesses here, just the SMUD
5 witnesses?

6 MS. PEASHA: Well, if staff is going
7 to --

8 HEARING OFFICER SHEAN: Is one of them a
9 consultant?

10 MS. HOLMES: No.

11 HEARING OFFICER SHEAN: No, okay.

12 MS. PEASHA: So, no?

13 HEARING OFFICER SHEAN: Pardon me?

14 MS. PEASHA: So, no? We don't need --

15 HEARING OFFICER SHEAN: Bye bye.

16 MS. PEASHA: Oh, boy, I think land use,
17 I don't know, it's going to be tied in with the
18 biological, so I'm going to stay away from that
19 right now.

20 HEARING OFFICER SHEAN: And what is it
21 that you think you are going to talk about on
22 biology, then? Because that's essentially
23 reserved as a topic for a later discussion if it's
24 biology.

25 MS. PEASHA: Well, I'm just waiting for

1 the Corps of Engineers and for the --

2 HEARING OFFICER SHEAN: Okay, that's all
3 later, is it not?

4 MR. COHN: Yeah.

5 MS. PEASHA: That's right.

6 MR. COHN: Mr. Shean, on that what I
7 might suggest is you could think about noticing
8 for the 14th, which would, you know, perhaps at
9 the end of the hearing for us, in essence, to do a
10 prehearing conference on biology to see where we
11 are at that point.

12 And I think we'll know enough to be able
13 to schedule when the hearing would be by that
14 time.

15 So, not to discuss --

16 HEARING OFFICER SHEAN: All right, if
17 I -- if I --

18 MR. COHN: -- isn't --

19 HEARING OFFICER SHEAN: -- understand
20 what we basically had said would be the, at least
21 at one point, the trigger, which is the acceptance
22 as complete of the -- by the Corps. Is that
23 happening? Has it happened?

24 MR. COHN: Yeah, the Corps has now
25 accepted the wetland delineation and our

1 understanding is initiating consultation
2 momentarily here. So we think that by the time of
3 the 13th or 14th, when the hearing will take
4 place, you probably will have a very good idea
5 about dates and timelines.

6 So I'm not suggesting a hearing on that;
7 I'm talking about just a prehearing conference.

8 MS. PEASHA: Well, maybe then I will
9 open that back up, the use of land. And that's
10 because I feel that the land use -- and I know
11 Colin hates to hear about this -- but I think a
12 lot of this property that we're sitting on right
13 now is wasting away because it's all paved and
14 with a construction superintendent with the right
15 knowledge of a CPM, which is a critical path
16 method, could figure out a way to use this
17 property and not have to use that laydown area
18 across the street.

19 HEARING OFFICER SHEAN: And that's on a
20 general land use or a biology basis?

21 MS. PEASHA: Well, I'm thinking what you
22 got, all you got acres and acres of paved area out
23 here, and what we're doing, we're cutting up some
24 wetlands over there that I think should not be
25 touched.

1 So I think the land use, I don't know
2 why they're so adamant about using that area over
3 there when they've got 30-plus acres over here.

4 And every day, every construction
5 worker, every professional craftsman should know
6 exactly what he should be bringing in there as far
7 as --

8 MR. COHN: Mr. Shean, --

9 MS. PEASHA: -- what truck needs to be
10 going in there, and who needs to be in there with
11 their equipment and their tools.

12 MR. COHN: We --

13 MS. PEASHA: And a tool shed on that
14 property would eliminate the use of that whole
15 area over there.

16 MR. COHN: Mr. Taylor will be available
17 to explain why we need to have the laydown area
18 where it is. We obviously won't address the
19 biology issues at that time, but can address the
20 issue she's raising generally of why we're using
21 additional land for that purpose.

22 MS. PEASHA: Well, I'd like Mr. Nelson
23 also there to be -- to answer why, in fact, --

24 MR. COHN: Yes, Mr. Nelson will also be
25 available.

1 HEARING OFFICER SHEAN: Okay, that's
2 fine. Do you want to do any direct on that, or do
3 you just want to ask questions?

4 MS. PEASHA: I just want to do direct,
5 yes.

6 HEARING OFFICER SHEAN: Okay. Cross?
7 All right. And you don't want to do this in two
8 days, you're going to be very busy.

9 PRESIDING MEMBER PERNELL: Well, it is
10 the Committee's intention to get this done in two
11 days.

12 HEARING OFFICER SHEAN: No, I mean she
13 wanted to do it in one.

14 PRESIDING MEMBER PERNELL: Oh.

15 MS. PEASHA: Well, I'd like to do it in
16 an hour if it was feasible, but, you know, --

17 HEARING OFFICER SHEAN: Yeah, -- okay.

18 MS. PEASHA: Facility design is the
19 engineer of the basins, which I share. I would
20 like to hear his testimony on why they're using
21 benzenite or what is the lining for the basins?

22 HEARING OFFICER SHEAN: Okay, that's all
23 in the --

24 MS. PEASHA: Bentonite.

25 HEARING OFFICER SHEAN: -- whole basin

1 issue, which we have already got reserved time
2 for.

3 MS. PEASHA: All right. But does it
4 have the dimensions on there?

5 HEARING OFFICER SHEAN: I mean I can't
6 believe that they're not somewhere, either in the
7 AFC or the --

8 MS. PEASHA: I could not find them to
9 save my life--

10 HEARING OFFICER SHEAN: Okay.

11 MS. CHEW: From data response 13.

12 MS. HOLMES: Thirteen.

13 MS. PEASHA: Oh, that's in my closet
14 now, god.

15 MS. LUCKHARDT: Yeah.

16 MS. CHEW: That was probably sent in
17 January.

18 MS. PEASHA: But can you tell me offhand
19 what they are? Anyone?

20 MS. CHEW: Basis that 1.5 acres, Kevin,
21 is that right?

22 MS. PEASHA: How many?

23 MS. CHEW: One and a half acres.

24 MS. PEASHA: One and a half acres? And
25 they --

1 MR. HUDSON: Approximately.

2 MS. PEASHA: And the depth?

3 MR. HUDSON: I don't have that
4 information (inaudible).

5 MS. PEASHA: Okay. All right, and also
6 I would like to call a couple witnesses, some
7 California certified civil engineers regarding
8 basin linings.

9 HEARING OFFICER SHEAN: Do you have them
10 in mind?

11 MS. PEASHA: I can't give you them, they
12 are certified California -- they are certified
13 civil engineers, but I can't give you their names
14 at this time.

15 HEARING OFFICER SHEAN: Okay.

16 MR. COHN: Mr. Shean, I assume we'll
17 address momentarily, once we finish this list,
18 when such testimony would be filed, written
19 testimony as opposed to just having somebody show
20 up the day of the hearing?

21 HEARING OFFICER SHEAN: Um-hum.

22 MR. COHN: Okay.

23 MS. PEASHA: Say that again? I'm sorry,
24 I'm --

25 HEARING OFFICER SHEAN: Ordinarily under

1 the Commission rules, rather than having this
2 either be like The People's Court or a trial, we
3 have the parties who want to present evidence, so
4 direct testimony, prepare in writing what they're
5 going to say and it doesn't --

6 MS. PEASHA: That's fine --

7 HEARING OFFICER SHEAN: Pardon me, -- it
8 doesn't need to be in a question-and-answer form;
9 it just can be a narrative.

10 MS. PEASHA: And I also (inaudible) that
11 with my witnesses, too.

12 HEARING OFFICER SHEAN: Correct, that's
13 the idea is that you --

14 MS. PEASHA: Okay.

15 HEARING OFFICER SHEAN: -- would do
16 that.

17 MS. PEASHA: If you want me to do that.

18 HEARING OFFICER SHEAN: We want you to
19 do that. And the idea is, for fairness, they have
20 to provide you that. And the fairness concept
21 then is, well, you have to provide them that. So
22 everybody knows pretty much what everybody's going
23 to say. And the questions that get asked are as
24 pointed as possible.

25 MS. PEASHA: Okay.

1 HEARING OFFICER SHEAN: Saves everyone a
2 lot of time.

3 MS. PEASHA: Okay, so say if I do just
4 have these engineers give statements and I don't
5 have them show -- cross-examine, and then your
6 testimony is compared. Then there can be a
7 decision made on that basis, too, sir?

8 HEARING OFFICER SHEAN: Okay, let me
9 just try to simply state this. When the
10 Commission is going to make a decision, we have to
11 make a decision that's based upon the record. And
12 there are two kinds of records.

13 Everything that's been submitted so far
14 today, which includes the application for
15 certification, the staff document, any of the
16 questions and comments you've submitted, all the
17 data responses, that's in what's called the
18 administrative record. And those are just boxes
19 and boxes and boxes at the Energy Commission, and
20 apparently they're residing in your closet, as
21 well. And some of them have probably gone up the
22 smokestack or into the landfill.

23 But, a subset of that is going to be
24 what we call an evidentiary record. And that is
25 materials, whether they're words spoken and taken

1 down by our reporter, or documents that are
2 submitted into evidence, which are sufficient to
3 support a finding.

4 Now, there are a whole bunch of findings
5 that the Committee, and ultimately the Commission,
6 have to make, such as complies with applicable
7 laws, ordinances, regulations and standards. Two,
8 under the California Environmental Quality Act
9 that there are no significant environmental
10 impacts. Or if there are, you have to go through
11 a series of things to essentially override that.

12 And those are the fundamental things.
13 And there are also some specified in the Warren
14 Alquist Act under section 25523.

15 Now, in order for that evidentiary
16 record to exist is why we're holding this hearing
17 later on in March. And so, someone who is going
18 to come make a statement and have direct
19 testimony, they will be under oath; they will
20 state what they have to state; and then what makes
21 it the -- gives it the truth test, if you will, is
22 that any other party can cross-examine that
23 witness.

24 So that's the -- so it's either the
25 person who is physically there, or the person who

1 comes and brings a document and says, I authored
2 this. Or if they're a qualified expert they can
3 bring a document saying, I relied upon this, and
4 in my professional opinion it supports the
5 following finding.

6 So, all we're saying is if you submit
7 something in writing like would be from a civil
8 engineer, and they come, everything's cool. If
9 they don't come for some reason, and aren't
10 subject to cross-examination, then that document
11 can still come into our record, but it, alone,
12 would not support a finding, let's say, that there
13 is a significant impact from the basin.

14 MS. PEASHA: And that's what's wrong
15 with bifurcating this, too, also. Because a lot
16 of the environmental impacts, biological, do fall
17 into those categories, too, don't you think --

18 HEARING OFFICER SHEAN: So, we're
19 prepared to wait and do that all in biology, or if
20 you think at this point --

21 MS. PEASHA: I see.

22 HEARING OFFICER SHEAN: And that's your
23 choice.

24 MS. PEASHA: Okay. Now, say if I come
25 in with a document and then when the biological

1 FSA is finally completed, then --

2 HEARING OFFICER SHEAN: You're going to
3 get this shot all over again.

4 MS. PEASHA: Thank you. That's all I
5 need.

6 HEARING OFFICER SHEAN: Okay. So, are
7 we going to leave those -- we really don't have a
8 biology thing going right now is my understanding
9 from my notes.

10 MS. PEASHA: Um-hum.

11 HEARING OFFICER SHEAN: Okay. All
12 right, now not that I want you to be creative and
13 add anything much more, but do you have anything
14 more?

15 MS. PEASHA: I think I'm finished.

16 HEARING OFFICER SHEAN: Oh, all right.
17 And I should indicate to you that even though Ms.
18 Bos is here from the Public Adviser's Office, is
19 not a lawyer, that Ms. Mendonca is. And they can
20 provide you some assistance. You don't need to go
21 out and get a law degree in the meantime. And you
22 can be pretty well assured that, you know, we're
23 not, from the Committee going to try to hit you
24 with a bunch of rules about -- that will require
25 you to be a lawyer, so you'll get, I think, a

1 meaningful opportunity to present what you need to
2 present.

3 MS. PEASHA: So, Roberta will be here
4 for the evidentiary hearings?

5 HEARING OFFICER SHEAN: I'm not sure.
6 You might --

7 PRESIDING MEMBER PERNELL: Well, I
8 would -- the Committee would recommend that the
9 Public Adviser work with you to help you prepare
10 for the hearing so that you will be more
11 comfortable in presenting your case.

12 So at some point between now and then I
13 would suggest Ms. Bos is here, get her card, set
14 up an appointment, and --

15 MS. PEASHA: I have met with Roberta, in
16 fact a couple times, since I've --

17 PRESIDING MEMBER PERNELL: Right, so --
18 but they can assist you in preparation.

19 HEARING OFFICER SHEAN: And if you have
20 a process question you can, as you already have,
21 call me.

22 MS. PEASHA: Okay.

23 HEARING OFFICER SHEAN: Now, is there --
24 I don't know if we have any other parties who are
25 present, but we don't have any other prehearing

1 conference statements. Is there any other
2 presentation that someone wants to make at the
3 evidentiary hearings?

4 MS. HOLMES: Mr. Shean, one of the
5 things that --

6 HEARING OFFICER SHEAN: In addition to
7 what --

8 MS. HOLMES: -- we didn't cover was
9 staff's response to what we expect the parties to
10 file. I noticed that Mr. Cohn had gone ahead and
11 talked about the potential that they may need to
12 provide witnesses that they hadn't identified in
13 their prehearing conference statement, as a result
14 of what they've heard tonight.

15 We didn't identify the need to do any
16 cross-examination or lengthy direct in our
17 prehearing conference, but having seen and heard
18 SMUD's discussion of some of the issues I just
19 think it would be appropriate for us to reserve
20 some time on the two issues that they wish to
21 adjudicate.

22 HEARING OFFICER SHEAN: You want to
23 reserve time for essentially what amounts to
24 rebuttal?

25 MS. HOLMES: No. I think it will be

1 potentially -- it's hard to say, since we haven't
2 seen their testimony, but we might be doing cross-
3 examination, as well, as I would call it direct
4 testimony. I'm not sure it would be rebuttal.

5 Just as they are proposing to do, just
6 as other parties are proposing to do direct and
7 rebuttal.

8 HEARING OFFICER SHEAN: Okay, they're
9 proposing to present direct evidence on the two
10 major issues, air quality and Haz-8 and --

11 MS. HOLMES: Right, and --

12 HEARING OFFICER SHEAN: Right?

13 MS. HOLMES: -- I'm suggesting that we
14 would like some time to present both direct and to
15 do some cross on those two topics, as well.

16 HEARING OFFICER SHEAN: So, --

17 MS. HOLMES: And I would suggest an hour
18 and a half for air quality. And I presume you're
19 simply going to let us divide up our time as we
20 like, direct versus cross. And an hour on hazmat.
21 Unless you want us to decide now how we'd divide
22 that up, but, just leave it at that and take a
23 look at what SMUD has to file before I have to
24 make a decision.

25 HEARING OFFICER SHEAN: Sure. And let

1 me just say, the Committee sort of takes these
2 time estimates by the parties as their wish list.

3 MS. HOLMES: I did not present this as
4 wish list. I felt like that was a fairly
5 realistic estimate. And since we don't have
6 testimony on anything else, I don't think it's an
7 unreasonable request.

8 HEARING OFFICER SHEAN: All right. We
9 will record that, throw that into the mix.

10 Okay, is there anything else we need to
11 do in terms of setting the matters to be heard at
12 the evidentiary hearings?

13 MR. COHN: I think the only thing would
14 be to set the date for when written testimony
15 would need to be submitted.

16 MS. LUCKHARDT: I think also since some
17 of staff's conditions impacts the final
18 determination of compliance I don't know whether
19 the Air District will be available or could be
20 available during that time, as to whether they
21 would have an opinion on way or another on that.
22 I think we need to leave that option available for
23 that.

24 HEARING OFFICER SHEAN: Okay, well,
25 ordinarily --

1 MS. HOLMES: What option? I'm sorry.

2 HEARING OFFICER SHEAN: They want to
3 have the --

4 MS. LUCKHARDT: The Air District --

5 HEARING OFFICER SHEAN: -- Air District
6 here so that if the Air District has an objection,
7 I guess, or comment upon the manner in which you
8 have enumerated air quality conditions proposed to
9 be put into the Presiding Member's Proposed
10 Decision and ultimately the decision, whether or
11 not they have comments about that.

12 MS. HOLMES: Well, it's my understanding
13 that our regulations require the Air District to
14 have a witness available at the hearings in any
15 event, so.

16 MS. LUCKHARDT: Okay, I just wanted to
17 have that down on Garret's list of folks.

18 HEARING OFFICER SHEAN: Okay.

19 MS. PEASHA: Can staff -- the Commission
20 let these other people know the limitations that
21 they do have on the air quality, as far as the low
22 emission replacement fireplaces? What was the
23 total on that?

24 On the air quality you have put a first-
25 come/first-served basis on the low emission fire,

1 wood-burning fireplaces. What are those figures?

2 MS. HOLMES: 317.

3 MS. PEASHA: 317.

4 MS. HOLMES: 317 fireplaces, wood
5 stoves.

6 MS. PEASHA: For the area --

7 MS. CHEW: A six-mile radius around the
8 power plant would be the first wave of residences
9 that we would like to see have replaced. Then it
10 expands to a 15-mile after --

11 (Parties speaking simultaneously.)

12 MS. HOLMES: It's 15 and 25 --

13 MS. CHEW: -- 15 and 25 radius. So
14 first those living within 15 miles of the plant
15 would have a first chance of obtaining a wood
16 stove replacement. And then if not enough
17 residents -- 317 residences do not take advantage
18 of that, then we would expand the radius to 25
19 miles. And staff has asked for it to be within
20 Sacramento County.

21 MS. PEASHA: How will we be notified of
22 that?

23 PRESIDING MEMBER PERNELL: All right, we
24 have a sign-in list, I'm assuming. But if you
25 want to be notified on the hearing, is that what

1 your question is? In terms of how you'd be
2 notified of --

3 MS. CORRILLO: This apparently is going
4 to be affecting me, as well, in regards to the
5 wood burning stove issue.

6 HEARING OFFICER SHEAN: Okay, --

7 MS. CORRILLO: And I'm just wondering
8 how are you --

9 PRESIDING MEMBER PERNELL: Okay, I need
10 your --

11 MS. CORRILLO: -- notifying --

12 PRESIDING MEMBER PERNELL: -- name for
13 the record. And I need you a little bit closer to
14 the mike.

15 MS. CORRILLO: My name's Leanne
16 Corrillo. I live on Clay East Road.

17 PRESIDING MEMBER PERNELL: Okay.

18 MS. CORRILLO: And it's been brought to
19 my attention something about this wood burning
20 stove issue. And that would directly affect me,
21 as well. And I'm just wondering, are you going to
22 be notifying all the local -- within that six-mile
23 radius?

24 MS. CHEW: If staff's condition is
25 ultimately accepted, then one that would be issued

1 in the decision. And so you'd find out that way
2 whether or not staff's recommended condition was
3 accepted and approved.

4 Or perhaps maybe the condition is
5 modified. Maybe it's a smaller radius or a larger
6 radius, or different requirements or different
7 amount of wood stoves was the ultimate decision.
8 So you could find out through the decision whether
9 or not the wood stove replacement program is a
10 program that would be as part of this project.

11 MS. HOLMES: There isn't a notification
12 process currently identified in the condition that
13 staff has proposed. The way this program has
14 worked in the past is that we've asked the
15 applicant if the proposal is agreed to by the
16 Commission.

17 We ask the applicant to put together a
18 plan; and the plan includes the notification
19 provisions. And that goes to the compliance
20 project manager to make sure they're sufficient.

21 But the specific notification
22 requirements are not in the condition that we've
23 proposed. We did not get to that level of detail
24 at this point.

25 MS. CORRILLO: And is this a mandatory -

1 - is it going to be mandatory, or is it optional?

2 MS. HOLMES: It's mandatory for SMUD.

3 It would be optional for residents.

4 PRESIDING MEMBER PERNELL: Right now

5 it's a --

6 MS. CORRILLO: And how do you

7 determine --

8 HEARING OFFICER SHEAN: -- it's a

9 recommendation. And so it is not a concrete.

10 It's a staff recommendation to the Committee. And

11 I think what staff is saying is until the

12 Committee actually votes on the project, that

13 won't be in effect.

14 MS. CORRILLO: Thank you.

15 HEARING OFFICER SHEAN: Okay, let's

16 discuss when we want to get the written direct

17 testimony in by. If we hold the hearings on the

18 13th and 14th, I think which I'm showing as a

19 Thursday and Friday of March, is that correct?

20 MR. COHN: Yes, I believe so, yes.

21 MS. LUCKHARDT: Yes.

22 MR. GARCIA: Say the dates again?

23 HEARING OFFICER SHEAN: March 13, 14.

24 And you're going to have this workshop on the 4th?

25 MR. COHN: Right.

1 HEARING OFFICER SHEAN: And staff had a
2 suggestion here?

3 MS. HOLMES: The 28th.

4 MS. PEASHA: Well, if the workshop
5 doesn't necessitate some of this, then it will be
6 kind of a waste of time for us to do all the
7 testimony and then have the workshop and --
8 because that's a lot of work --

9 HEARING OFFICER SHEAN: Yes, --

10 MS. PEASHA: -- for me, I mean I'm
11 loaded down --

12 HEARING OFFICER SHEAN: -- and I think
13 our preference would be to put more time available
14 on the preparation end --

15 MR. COHN: If I might offer a
16 suggestion?

17 HEARING OFFICER SHEAN: Sure.

18 MR. COHN: I think staff, in particular,
19 was concerned about SMUD's testimony in the areas
20 we had challenged, and we certainly could,
21 especially in the area of air, agree to file that
22 in advance of the workshop. Although we would
23 prefer March 3rd, rather than the 28th. That
24 would give us the weekend, next weekend to prepare
25 testimony, rather than presenting it next Friday.

1 As far as the other areas, for example,
2 that Ms. Peasha has designated --

3 PRESIDING MEMBER PERNELL: Hold one
4 second.

5 MR. COHN: Yes.

6 PRESIDING MEMBER PERNELL: Does staff
7 have a problem with that?

8 MS. HOLMES: Doesn't give us very much
9 time before the hearings to prepare; that's the
10 concern we have. And that's why we had suggested
11 the 28th.

12 It didn't strike me that the issues that
13 you plan to contest are likely to be resolved at
14 the workshop, and so I didn't tie, in my
15 prehearing conference statement, the dates for
16 filing the testimony to the workshop.

17 But it seems to me that since staff's
18 assessment has already been out for awhile, that
19 it would be fair for us to have the 14 days to
20 review the testimony in the areas that they know
21 are going to be contested.

22 HEARING OFFICER SHEAN: All right, and
23 what is your recommendation with respect to Ms.
24 Peasha's testimony?

25 MR. COHN: On the other ones we'd be

1 happy to have that March 5th to give that, or even
2 March 6th, to give her the --

3 MS. PEASHA: How about March 10th.

4 MR. COHN: -- to give her the
5 opportunity to hear, you know, at the workshop
6 before deciding what needs to be filed.

7 MS. PEASHA: I was only given seven days
8 to prepare from this part one of this.

9 HEARING OFFICER SHEAN: Given the number
10 of topics you've come up with, it would be a
11 Herculean task, I think, to have a public
12 intervenor do the same schedule with either the
13 Commission Staff or with SMUD, who had, I don't
14 know about endless resources, but significantly
15 more, okay.

16 So, I think what we will do is to have
17 SMUD file its testimony on or before the close of
18 business on Monday, March 3rd.

19 And we'll give you until the close of
20 business on Friday, March 7th. That'll be a bit
21 of a squeeze, doesn't give you the whole weekend,
22 but we will try to give you as much time as
23 possible.

24 That way we can begin to --

25 MS. PEASHA: On all of my topics?

1 HEARING OFFICER SHEAN: Anything that
2 you're doing direct testimony on.

3 MS. PEASHA: All right.

4 HEARING OFFICER SHEAN: Okay. So it's
5 not -- once you look back through your list and
6 ultimately you'll get the list that we will put
7 out, and if it has the word direct on it, then
8 that's when you need to have somebody write it
9 down and send it to us. Okay?

10 MR. COHN: If I may, that's acceptable.
11 The one thing I would say, if we are able to reach
12 agreement with staff after the workshop on the
13 4th, we may file an amendment to our testimony, or
14 even potentially withdraw portions, depending on
15 how things go at the workshop.

16 And we would do that as soon as possible
17 after the workshop.

18 HEARING OFFICER SHEAN: Yeah, I think
19 what we'd ask is that at the earliest possible
20 time following the workshop, if no subject matter
21 has been essentially agreed to, whether it's
22 between you and the staff, between you and Ms.
23 Peasha or this way, notify us and -- first of all,
24 if they notify us that they think they've agreed
25 on something with you, we'll at least leave it on

1 so that unless you inform us that something has
2 been agreed to to your --

3 MS. PEASHA: Okay.

4 HEARING OFFICER SHEAN: -- satisfaction,
5 we will not take it off your calendar.

6 MS. PEASHA: Okay.

7 HEARING OFFICER SHEAN: All right?

8 MS. PEASHA: So do I get in trouble if I
9 don't --

10 HEARING OFFICER SHEAN: If you don't
11 agree? If you --

12 MS. PEASHA: No, if I don't -- if I take
13 it off and I don't tell you.

14 HEARING OFFICER SHEAN: You know, we'd
15 like you to let us know. Because what we're going
16 to do, it's sort of like taking cars out of a
17 train. The idea is we just keep shoving stuff up.

18 MS. PEASHA: Right.

19 HEARING OFFICER SHEAN: But then when we
20 divide the days, we don't like to pull from Friday
21 onto Thursday something that people aren't
22 expecting to hear, but we'll -- so that's the
23 general purpose there. And we'll try to divide
24 this stuff up so we take the things that we think
25 are unlikely to be resolved will be in the morning

1 of each of the two days.

2 MS. PEASHA: Are the order of topics
3 going to stay the same, or are we going to -- or
4 are you going to give us a --

5 HEARING OFFICER SHEAN: No, we're going
6 to play with it a little bit, as I said, to try to
7 make sure that we have dedicated the -- I'm sorry,
8 there's a biologist that objects to that?

9 (Laughter.)

10 HEARING OFFICER SHEAN: Was that an
11 endangered species? All right. So the mornings
12 are at least scheduled for things that we believe,
13 based upon what we've heard here this evening, are
14 going to go.

15 So, do you have a particular preference
16 with any of this?

17 MS. PEASHA: No, I just wondered --

18 HEARING OFFICER SHEAN: Okay.

19 MS. PEASHA: -- if we were going to --

20 PRESIDING MEMBER PERNELL: But there
21 will be a notice sent, so --

22 HEARING OFFICER SHEAN: Yeah, we're
23 going to put out a notice.

24 PRESIDING MEMBER PERNELL: -- you'll
25 know ahead of time.

1 HEARING OFFICER SHEAN: So you'll know
2 well ahead of time.

3 Okay.

4 MS. HOLMES: Mr. Shean, I had one other
5 comment, and that had to do with the potential
6 need for staff to file supplemental testimony to
7 respond to anything that gets filed. I'm not
8 trying to expand the scope of the hearings. What
9 I'm trying to do is to cut off any need for
10 rebuttal testimony. I'd prefer to do anything,
11 any supplement that needs to be filed to address
12 new points that SMUD may raise in their testimony
13 that they're filing on the 3rd.

14 I would propose that we do that on the
15 10th of March. And I do intend to keep it as
16 brief as possible. It may not be necessary at
17 all.

18 HEARING OFFICER SHEAN: Well, we can do
19 that, or we can make it exciting and just do that
20 all orally. So that if you have a little
21 something to add, or they have a little something
22 to add, we'll keep all the lawyers on their toes
23 and --

24 MS. HOLMES: That's why I'd prefer to do
25 it ahead of time.

1 (Laughter.)

2 HEARING OFFICER SHEAN: Do you care?

3 MR. COHN: Either way is acceptable to
4 us. Either just set a date in advance, or do it
5 orally.

6 HEARING OFFICER SHEAN: All right.

7 MR. COHN: As long as it's the same for
8 both or all parties.

9 HEARING OFFICER SHEAN: We'll make the
10 10th the time for filing any rebuttal.

11 MR. COHN: Well, I was going to say
12 now --

13 HEARING OFFICER SHEAN: Is that all
14 right?

15 MR. COHN: -- I just thought if we are
16 going to do that, that would mean we actually need
17 to receive Ms. Peasha's testimony on the 7th,
18 because we couldn't very well rebut it if we
19 didn't see it yet.

20 HEARING OFFICER SHEAN: Well, that'd be
21 the idea. She's going to --

22 MS. PEASHA: Well, I'll --

23 (Parties speaking simultaneously.)

24 MR. COHN: -- she mails it on the 7th,
25 that doesn't mean we'll see it --

1 HEARING OFFICER SHEAN: Do you not
2 have --

3 MS. PEASHA: I don't -- go that way --

4 HEARING OFFICER SHEAN: -- email
5 capability?

6 PRESIDING MEMBER PERNELL: -- live
7 across the way, she can drop it off.

8 MR. COHN: If we can see it before the
9 10th we could, if necessary, rebut it. If we
10 don't see it until the 10th, obviously it would be
11 difficult to --

12 HEARING OFFICER SHEAN: I'm sorry, so
13 you do not have an email capability, is that
14 right?

15 MS. PEASHA: I have it, you know, but I
16 don't do it, I'm sorry, Mr. Shean. I can't
17 physically do it.

18 HEARING OFFICER SHEAN: Okay.

19 MR. COHN: So maybe Caryn's suggestion
20 is not a bad one.

21 MS. PEASHA: I waited the day --
22 (Parties speaking simultaneously.)

23 MR. COHN: Or Mr. Shean's suggestion.

24 MS. PEASHA: -- part one of the FSA
25 because of the U.S. Mail Service, so I believe --

1 HEARING OFFICER SHEAN: All right, well,
2 then we --

3 MS. LUCKHARDT: -- just do it at the
4 hearing.

5 HEARING OFFICER SHEAN: -- let's not
6 squeeze it; we'll just do it at the hearing.

7 MR. COHN: Yeah, do it at the hearing.

8 PRESIDING MEMBER PERNELL: All right,
9 good.

10 HEARING OFFICER SHEAN: I like that a
11 lot more.

12 All right. I like to see these
13 lawyers -- all right, do we have any comments from
14 the public? I have a blue card here from Mike
15 Roskey representing himself.

16 MR. ROSKEY: Yeah, my name's Mike
17 Roskey. I understand, according to the schedule
18 here, that it's too late to be an intervenor, is
19 that correct?

20 PRESIDING MEMBER PERNELL: I'm sorry, I
21 can't hear you.

22 MR. ROSKEY: An intervenor? Is it too
23 late to be an intervenor?

24 HEARING OFFICER SHEAN: I --

25 MS. PEASHA: That's not what this says.

1 HEARING OFFICER SHEAN: I think it says
2 today.

3 MS. PEASHA: Today.

4 MS. BOS: Today it's right before the
5 prehearing, according to your time sheet, it's --
6 (Parties speaking simultaneously.)

7 HEARING OFFICER SHEAN: It says no later
8 than February 21, so it's still February 21st.

9 MS. PEASHA: Today, today --

10 PRESIDING MEMBER PERNELL: Would you
11 like to be an intervenor?

12 MR. ROSKEY: Yes.

13 PRESIDING MEMBER PERNELL: All right,
14 Ms. Bos, --

15 MR. ROSKEY: Please.

16 HEARING OFFICER SHEAN: Do you want to
17 present something at that evidentiary hearing?

18 MR. ROSKEY: Actually I'm concerned
19 about the air quality part of the assessment. I
20 read over it. I think there's some methodological
21 problems that I would like to ask questions about.

22 PRESIDING MEMBER PERNELL: Questions for
23 the staff witness and applicant witnesses?

24 MR. ROSKEY: Since it's written by
25 staff, I think the questions should be directed to

1 staff, because I disagree with some of the
2 methodology of their assessment.

3 HEARING OFFICER SHEAN: Okay, can you
4 help hone this down a little bit, then, as to is
5 there a particular area --

6 MR. ROSKEY: What my problem --

7 HEARING OFFICER SHEAN: -- that is --

8 MR. ROSKEY: -- is?

9 HEARING OFFICER SHEAN: Yes.

10 MR. ROSKEY: I disagree with using the T
11 Street Station as a point of measurement for
12 particulate matter, which is a point I think
13 that's -- a geographic point which is at least 20
14 miles removed from the site, proposed site.

15 And I think it's not necessarily part of
16 the air patterns that will be affecting that
17 region in which the site will be located.

18 I also have a problem with their
19 definition of permissible limits under law. I
20 don't think they've taken into consideration all
21 sources of particulate emissions. Especially if
22 you look into the future. I think that we're
23 talking about a crisis that's waiting to happen.

24 Those are my primary objections.

25 HEARING OFFICER SHEAN: Okay, I'm trying

1 to understand the second one. With regard to not
2 having taken into account all sources of
3 particulates, in that therefore there -- what's
4 the, as I asked Ms. Peasha, what's the consequence
5 here?

6 Does that mean there's --

7 MR. ROSKEY: What's the --

8 HEARING OFFICER SHEAN: -- insufficient
9 particulate offsets? Or the -- what do you want
10 us to do with what --

11 MR. ROSKEY: I don't -- the offsets
12 apparently aren't even enough. They have to have
13 a wood burning stove emissions program,
14 replacement program. I don't -- I don't think
15 that even with the offsets that they've proposed
16 that you're going to reduce the emissions below
17 legal standards, because they haven't taken into
18 consideration sources of particulate particle
19 emissions such as cars.

20 We have -- especially they don't seem to
21 have any kind of -- in the report that I can find,
22 any kind of analysis of population trends in the
23 area, especially new construction, housing
24 construction in the area.

25 Traffic patterns that are developing in

1 the area. There's nothing on that.

2 HEARING OFFICER SHEAN: Okay.

3 MR. ROSKEY: I believe that that's
4 extremely important shortcoming in this report and
5 assessment.

6 PRESIDING MEMBER PERNELL: What's your
7 name, again, sir?

8 MR. ROSKEY: Roskey, R-o-s-k-e-y.

9 MS. BOS: Mr. Shean.

10 HEARING OFFICER SHEAN: Yes.

11 MS. BOS: Can it be on the record then
12 that this gentleman wants to intervene, so that we
13 can send -- if we're sending the forms out on
14 Monday for him to fill out that --

15 HEARING OFFICER SHEAN: He doesn't need
16 to fill out a form, he's here.

17 MS. BOS: That's true, but if you're
18 going to --

19 HEARING OFFICER SHEAN: What we need to
20 do is to get -- we have your P.O. Box address of
21 704, Wilton 95693.

22 MR. ROSKEY: Yeah.

23 HEARING OFFICER SHEAN: Do you also have
24 any email capability?

25 MR. ROSKEY: Yes, sir, I do. And I'm on

1 the email list already.

2 MS. BOS: He's on our list.

3 HEARING OFFICER SHEAN: Are you? Okay.

4 MS. LUCKHARDT: Can you repeat the
5 address, since -- thank you.

6 HEARING OFFICER SHEAN: Okay. Now, what
7 will happen is the Public -- is the Public Adviser
8 going to send you the copy of the AFC, or is it
9 the Commission Staff?

10 MS. CHEW: I have extra copies of the
11 AFC here tonight.

12 HEARING OFFICER SHEAN: Oh, all right.

13 PRESIDING MEMBER PERNELL: Looks like --
14 is that a copy of the AFC that you have?

15 MR. ROSKEY: As far as I know it is --

16 HEARING OFFICER SHEAN: That's the
17 staff's FSA, I believe.

18 MR. ROSKEY: Oh, okay.

19 PRESIDING MEMBER PERNELL: Oh, okay, all
20 right. So we'll get you the information and if
21 there's any questions we have the Public Adviser's
22 Office. She'll give you a card and you can call
23 them.

24 HEARING OFFICER SHEAN: How long do you
25 think you're -- you want to examine the staff

1 witness, right? Can we --

2 MR. ROSKEY: As of now I have no way of
3 knowing, you know. It's certainly probably going
4 to be less than an hour. I don't think it will
5 take that long.

6 HEARING OFFICER SHEAN: All right.
7 We'll show you at three-quarters of an hour.

8 PRESIDING MEMBER PERNELL: Okay.

9 HEARING OFFICER SHEAN: All right, now
10 is there any member of the public who would like
11 to address us? Or member of the audience?

12 MR. ROSKEY: Well, I'll call myself a
13 contributor. I just want to tell the Commission
14 that there have been a bunch of --

15 HEARING OFFICER SHEAN: And your name,
16 again, sir?

17 MR. MEEHAN: Oh, it's Bill Meehan. I
18 represent organized labor in Sacramento.

19 I've been down to a number of hearings,
20 and I think it's the right of everyone to raise
21 the issues that they want to raise. I don't have
22 any problem with that.

23 I had one question about whether or not
24 you'd reimburse me for a fireplace replacement
25 that I already put in, but I wasn't going to get

1 into that.

2 (Laughter.)

3 MR. MEEHAN: But I will tell you that --

4 PRESIDING MEMBER PERNELL: No

5 grandfathering.

6 (Laughter.)

7 MR. MEEHAN: -- the SMUD people have
8 been sensitive to a lot of issues to date. The
9 contract was put together and approved. And by
10 the way, it was probably one of the largest crowds
11 of citizens in this community turned out in
12 support of.

13 There's a lot of people in the community
14 that support the program, support what SMUD's
15 doing.

16 Understandably, we believe it should be
17 safe and cost effective, and certainly we're not
18 going to go against certain things that put people
19 in harm's way.

20 But I want to just go on record as
21 letting you know that there are a number of people
22 out there that support what's going on here.

23 HEARING OFFICER SHEAN: Thank you very
24 much.

25 MS. PEASHA: I do have a question.

1 There was a --

2 HEARING OFFICER SHEAN: Before we get
3 back to you, may we just see if there's anybody
4 else who'd like to --

5 MS. PEASHA: Well, it was regarding what
6 he said.

7 HEARING OFFICER SHEAN: All right, well,
8 is there any other --

9 MR. MEEHAN: If she wants to talk to me,
10 she can come outside.

11 (Laughter.)

12 HEARING OFFICER SHEAN: Is there any
13 other --

14 MS. PEASHA: I'm sorry, go ahead --

15 HEARING OFFICER SHEAN: -- member of the
16 audience who would like to make a comment before
17 we are eaten alive or forced out by the bugs?

18 All right, rather than get into an
19 intramural debate here, among public commenters
20 that -- yes, ma'am?

21 UNIDENTIFIED SPEAKER: (inaudible).

22 HEARING OFFICER SHEAN: Oh.

23 (Laughter.)

24 PRESIDING MEMBER PERNELL: Sold.

25 HEARING OFFICER SHEAN: All right. I

1 thought you wanted to take an oath or something.

2 And having gone through three days of that, I --

3 All right, we'd like to thank you for
4 attending. We will crank out an order and get
5 this to you as soon as possible. And thank you
6 very much.

7 (Whereupon, at 7:00 p.m., the prehearing
8 conference was adjourned.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Prehearing Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 21st day of March, 2003.

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